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MEMORANDUM

To: Sarpy County Board of Commissioners
From: Bonnie N. Moore, Deputy Sarpy County Attorney
RE: Public Nudity Ordinance and Sexually Oriented Business Regulation
Date: April 19, 2013

Over the past several months, I have worked on drafting a Public Nudity Ordinance and Sexually Oriented Business Zoning Regulation. At the April 23, 2013 County Board Meeting, I will give a brief presentation on the fruits of those efforts; identify the process for adopting a Public Nudity Ordinance and/or Zoning Regulation; and solicit further direction from the Board.

I have attached my PowerPoint Presentation, draft Public Nudity Ordinance, and draft Sexually Oriented Business Zoning Regulation for your review. If you have any questions, please do not hesitate to contact me. Thank you.

**Public Nudity Ordinance
and
Sexually Oriented Business Zoning
Regulation**

Ordinance authority

Under Neb. Rev. Stat. § 23-187, counties are permitted to regulate violations of the public peace and order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity.

What is considered public nudity?

Not defined in Neb. Rev. Stat. § 23-187 (or surrounding statutes), therefore Sarpy County has some latitude in defining what it considers to be “public nudity.”

Are there any other laws that already prohibit public nudity?

Neb. Rev. Stat. § 28-806. Public indecency; penalty.

(1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

What is a sexually oriented business?

- Strip club
- Adult motel
- Adult movie theater
- etc.

How would a sexually oriented business zoning regulation work?

A sexually oriented business owner would have to apply for a special use permit.

What are the reasons for having a public nudity ordinance and a sexually oriented business zoning regulation?

Ordinance	Zoning Regulation
General	Very detailed
More direct enforcement	More restrictive than Ordinance.
	Business owner must apply for special use permit.

	Location Restrictions	Hours of Operation	Age Restrictions	Grandfather Clause	Criminal Conviction Restrictions	Alcohol Restrictions
Bellevue	General business district + 1,000 feet of another SOB and restricted use area	Weekdays: 1:00 a.m. – 8:00 a.m. Weekends: 1:00 a.m. – 12:00 p.m.	21 years or older	Yes; if an SOB is not in compliance on the date of enactment, the SOB is permitted to operate for one year and then must be compliant.	Yes	Yes; no alcohol permitted
Gretna	Heavy industrial + 1,000 feet of restricted use area	12:00 a.m. – 6:00 a.m.	18 years or older	No	No	No
LaVista	Heavy industrial + 500 feet of another SOB and restricted use area	1:00 a.m. – 6:00 a.m.	18 years or older	No	No	No
Papillion	2,500 feet of another SOB and restricted use area	No	19 years or older	Yes; if an SOB is not in compliance on the date of enactment, the SOB is permitted to operate for one year and then must be compliant.	Yes	Yes; suspension if “excessive use” of alcohol by employees or licensee
Springfield	Light industrial district, 300 feet of restricted use area + 2,500 feet of another SOB	No	Minors or those under the age of 21 are not permitted	Yes; if an SOB is not in compliance on the date of enactment, the SOB is permitted to operate for three years and then must be compliant.	No	No

What are the next steps?

Ordinance

- Motion to draft
- Discussion
- Notice
- Public hearing
- Notify cities
- Readings
- Publish adopted ordinance
- Effective date

Zoning Regulation

- Preparation
- Planning Commission
- Public hearing
- County Board
- Adoption

Questions?

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH A LAW REGARDING PUBLIC NUDITY; TO ESTABLISH A PENALTY AND PROVIDE A METHOD OF ENFORCEMENT; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Whereas, Neb. Rev. Stat. § 23-187 permits a county to regulate violations of the public peace and order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity;

Whereas, Sarpy County has an interest in protecting the order, health, safety, and well-being of the citizens of Sarpy County;

Whereas, nudity may be offensive to the order, health, safety, and well-being of the citizens of Sarpy County; and

Whereas, the Sarpy County Board has held a public hearing on the matter, after giving due notice as required by law.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF THE COUNTY OF SARPY:

SECTION 1. Definitions: For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include words in the plural number. The word "shall" is always mandatory, and not merely directory.

- a) **Nudity or a state of nudity** means the appearance of a human bare buttock, anus, male genitals, female genitals, pubic region or female breast(s); or a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, pubic region, nipple of the female breast, or areola of the female breast.
- b) **Public place** means all outdoor spaces owned by or open to the general public, and all buildings, structures, and enclosed spaces owned by or open to the general public, including (but not limited to) places of entertainment, taverns, restaurants, clubs, dance halls, banquet halls, hotels, party rooms, or halls limited to specific members, and places restricted to adults or patrons invited to attend, whether or not an admission or cover charge is levied; and public streets, sidewalks, alleys, or other public thoroughfares, in or such close proximity thereto, as to be observed the public traveling on such street, sidewalk, or other thoroughfare.

SECTION 2. Prohibited acts:

It shall be unlawful for any person to intentionally appear in a public place in a state of nudity.

SECTION 3. Exceptions:

- a) No person shall be in violation of this Ordinance for breastfeeding a child.
- b) This Ordinance shall not apply to children under the age of ten years old.
- c) No person shall be in violation of this Ordinance for appearing nude or seminude in any dressing/changing room, locker room, or restroom facility.
- d) This Ordinance shall not apply to a nude modeling studio that is part of a proprietary school licensed by the State of Nebraska; or a college or junior college or university supported entirely

or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 4. Penalty:

Any person found to be in violation of this Ordinance shall be guilty of a Class III misdemeanor, punishable by a maximum of three months imprisonment, a five hundred dollar fine, or both.

SECTION 5. Intent:

It is the intent of this Ordinance to promote the order, health, safety, and well-being of the citizens of Sarpy County. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on a legitimate exercise of free speech, as it is protected under the First Amendment.

SECTION 6. Effective area:

This Ordinance shall be effective outside the city limits and extraterritorial jurisdiction of the following cities: Bellevue, LaVista, Springfield, Gretna, and Papillion.

SECTION 7. Effective date:

This Ordinance shall take effect and be in force fifteen days after its passage, approval, and publication, as provided by law.

Passed and Adopted this _____ day of _____, 2013.

Chairperson

Attest:

County Clerk

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SECTION 45 – SEXUALLY ORIENTED BUSINESS REGULATIONS

45.1 PURPOSE AND INTENT

45.1.1 It is the purpose of this Regulation to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of Sarpy County ("County"), and to establish reasonable and uniform regulations for and to prevent the concentration of sexually oriented businesses within the County. The provisions of this Regulation have neither the purpose nor effect of: imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials; restricting or denying access by adults to sexually oriented materials protected by the First Amendment; denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; or imposing a limitation or restriction on legitimate exercises of free speech, as it is protected under the First Amendment.

45.1.2 The findings contained in the preamble of this Regulation are determined to be true and correct and are adopted as part of this Regulation.

45.2 TITLE

This regulation shall be known and cited as the "Sarpy County Sexually Oriented Business Regulation."

45.3 SEVERABILITY

45.3.1 If any word, phrase, sentence, part, section, subsection, or other portion of this Regulation or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such work, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Regulation, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

45.3.2 Any special use permit issued under this Regulation shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total.

45.4 DEFINITIONS

For purposes of this Regulation, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. In addition, when not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include words in the plural number. The word "shall" is always mandatory, and not merely directory.

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Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features persons who appear in a state of nudity; or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult motel means a hotel, motel, or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions of photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; offers a sleeping room for rent for a period of time that is less than ten hours; or allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Applicant means a person who must apply for a special use permit pursuant to this Regulation.

Building and Planning Director means the Building and Planning Director of the County or his designated agent and/or deputy.

Child care facility means a building used as a day nursery, children's boarding home, child placing agency, or other place for the care or custody of children under 15 years of age, excluding in home daycare facilities.

Church or place of religious worship means a building, other than a personal residence, in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

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Continually operating means to operate continuously during normal business hours, with the exception of a temporary closure lasting no more than two weeks each year the business is in operation.

Employee, Employ, and Employment describes and pertains to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. For purposes of this Regulation only, "employee" does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

Escort means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person or persons.

Escort agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other any other form of consideration.

Establishment means and includes any of the following, the opening or commencement of any sexually oriented business as a new business; the conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business; the addition of any sexually oriented business to any other existing sexually oriented business; or the relocation of any sexually oriented business.

He, him or himself is gender neutral.

Manager's station means a permanently designated area marked accordingly within an adult oriented business where an adult oriented business manager is located in the normal course of operations.

Media, sexual oriented means magazines, books, videotapes, movies, slides, CD's, DVD's or other medium used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

Media store, sexually oriented means an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests: 1) more than 40 percent of the gross public floor area is devoted to sexually oriented media; 2) more than 40 percent of the stock in trade consists of sexually oriented media; or 3) it advertises or holds itself out in any forum as a "XXX," "adult" or "sex" business, or otherwise as a sexually oriented business, other than adult cabaret, adult motion picture theater or adult theater.

Nude or Semi-Nude Model(ing) Studio means a commercial establishment which regularly features a person who appears in a state of nudity or semi-nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any form of consideration. Nude or Semi-Nude Model(ing)

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Studio shall not include a proprietary school licensed by the State of Nebraska; or a college or junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Nudity or a state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, pubic region or female breast; or a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, pubic region, nipple of the female breast, or areola of the female breast.

Permitee means one who receives a permit.

Person means an individual, proprietorship, trust, partnership, corporation, association, or other legal entity.

Public park means a tract of land maintained by or at the direction of the federal, state, or a local government for the recreational use and enjoyment of the general public.

Public library means a nonprofit library maintained for public use.

Public place means (but is not limited to) all outdoor spaces owned by or open to the general public, and all buildings, structures, and enclosed spaces owned by or open to the general public, including places of entertainment, taverns, restaurants, clubs, dance halls, banquet halls, hotels, party rooms, or halls limited to specific members, and places restricted to adults or patrons invited to attend, whether or not an admission or cover charge is levied.

Public right-of-way means a strip of land that is granted, through an easement, or other mechanism, for public transportation purposes, such as, but not limited to, a trail, driveway, rail line, highway, or street.

Public view means a space that is easily viewable by the general public without the aid of binoculars, telescopes, or other types of devices.

Principal business means an establishment having a 10 percent or greater interest of its stock and trade in books, magazines and other periodicals of which such books, magazines and other periodicals are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or a 10 percent or greater interest in other sexually related activities as defined by this Regulation.

Rent means to allow the possession and use of property in exchange for any form of consideration.

Restricted use area means areas of land zoned as Agricultural Residential District, Residential Estates I District, Residential Estates II District, Single Family Residential District, Two-Family Residential District, General Residential District, Mobile Home

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Residential District, Highway Corridor Overlay District, Planned Development District, Planned Townhouse Development, Mixed Use District, and Build Through Acreages.

School means any public or private nursery, preschool, day care center, learning center, elementary or secondary school.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sex shop means an establishment offering goods for sale or rent and that meet any of the following tests: 1) it offers for sale items from any two of the following categories -- sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; sexually oriented novelties; and the combination of such items constitute more than ten percent of its stock in trade or occupies more than ten percent of its floor area; 2) more than five percent of its stock in trade consists of sexually-oriented toys or novelties; or 3) more than five percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminudity.

Sexually oriented business is an inclusive term used to describe collectively the following businesses: adult arcade, sexually oriented media store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, escort agency, sex shop, nude model studio, and/or sexual encounter center.

Sexually Oriented Business Special Use Permit means a special use permit issued to an applicant of such permit.

Specified anatomical areas include, less than completely and opaquely covered human genitals, pubic region, or the areola or nipple of the female breast; human male genitals in a discernibly turgid state, even if completely and opaquely covered; and areas of the human anatomy included in the definition of "nudity or state of nudity."

Specified sexual activities means acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person's genitals whether clothed or unclothed.

Sublet means to lease or rent all or part of a leased or rented property for any form of consideration.

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Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 20 percent, as the floor area exists on the effective date of this Regulation.

Transfer of ownership or control of a sexually oriented business means and includes any of the following: the sale, lease, or sublease of the business; the transfer of securities or other ownership interest which constitutes a direct, indirect, legal, equitable or beneficial controlling interest in the business, whether by sale, exchange, or similar means; or the establishment of a trust, gift, or other similar device which transfers the direct, indirect, legal, equitable or beneficial ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control to a person meeting all of the requirements of Section hereof, who shall have notified the Building and Planning Director of the transfer and furnished all of the information required to be submitted in an application for a special use permit, within 30 days of the transfer.

45.5 CLASSIFICATIONS

Sexually oriented businesses are classified as follows: adult arcades; sexually oriented media store; adult cabarets; adult motels; adult motion picture theaters; adult theaters; escort agencies; nude modeling studios; sexual encounter centers; and/or sex shops.

45.6 SPECIAL USE PERMIT REQUIRED

45.6.1 A Sexually Oriented Business Special Use Permit is required when:

- (A) A person intends to open for business a sexually oriented business;
- (B) There is an operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business located within 500 feet of another sexually oriented business; or
- (C) There is an operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

45.6.2 An individual person who wishes to operate a sexually oriented business must sign the application for a special use permit as an applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a special use permit as an applicant. Each applicant must be qualified under Section 45.7 and each applicant shall be considered a Sexually Oriented Business Special Use Permittee if a special use permit is granted.

45.6.3 An application for a Sexually Oriented Business Special Use Permit must be made on a form provided by Sarpy County Planning Department. The application must be accompanied by a sketch or diagram showing the configuration of the premises,

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including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 45.20.1(A) of this Regulation shall also submit a diagram meeting the requirements in Section 45.20.1(A). All locational requirements must be approved by Sarpy County Planning and Building Director within 30 days from the time the application is filed.

- 45.6.4 The applicant for a Sexually Oriented Business Special Use Permit must be qualified according to the provisions of this Regulation and the premises must be inspected and found to be in compliance with the law by the health department, building inspection department, and fire department. The health department, building inspection department, and fire department must complete their inspections and report their findings to the Sarpy County Planning and Building Director within 60 days from the time the application is filed.
- 45.6.5 The fact that a person possesses any other valid special use permit required by law does not exempt him from the requirement of obtaining a Sexually Oriented Business Special Use Permit. A person who operates a sexually oriented business and possesses another special use permit shall comply with the requirements and provisions of this Regulation as well as any other applicable city, county, state, or federal laws including, but not limited to Sarpy County Ordinance _____ (public nudity ordinance).
- 45.6.6 Each applicant shall attach two copies of a recent photograph of himself to the application form.
- 45.6.7 An applicant for a special use permit issued under this Regulation for a location that did not previously operate with a special use permit shall, not later than the 30th day before the date the application is filed, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of each applicant. The sign must be at least 24 by 36 inches in size and must be written in lettering at least three inches in size. The County may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed Sexually Oriented Business Special Use Permit. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the closest available right-of-way and upon the property. One sign shall be erected for each 300-hundred-foot increment of each public road or highway frontage on said property existing or any part thereof. Said signs shall remain erected until the application has been approved or denied by the County Board.
- 45.6.8 Every applicant for a Sexually Oriented Business Special Use Permit shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in Sarpy County, Nebraska. The notice shall

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be printed in at least 10-point boldface type and shall include: the fact that a Sexually Oriented Business Special Use Permit has been applied for; the date and time of any public hearing that will discuss the Sexually Oriented Business Special Use Permit; the exact location of the place of business for which the permit is sought; the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and if the applicant is a corporation, the names and titles of all officers.

45.6.9 An applicant for a renewal permit is not required to meet the posting and/or notice requirements of Sections 45.6.7 and 45.6.8.

45.6.10 The owner of the sexually oriented business shall provide a list of all employees who will be employed by the sexually oriented business to the Building and Planning Director. This list shall be maintained on file by the Planning Department. It shall be the duty of the owner to ensure that an updated list of the employees is provided to the Building and Planning Director within ten (10) days following any change in employees. Failure to provide an updated list to the Planning Director shall result in suspension of the special use permit pursuant to Section 45.11.

45.7 ISSUANCE OF SPECIAL USE PERMIT

45.7.1 The County Board shall approve the issuance of a special use permit to an applicant within 30 days after receipt of an application unless County Board finds one or more of the following to be true:

- (A) An applicant is under 18 years of age;
- (B) An applicant or an applicant's spouse is overdue in his payment to the County of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;
- (C) An applicant has failed to provide information reasonably necessary for issuance of the Sexually Oriented Business Special Use Permit, has provided false information on the application for the Sexually Oriented Business Special Use Permit, or has falsely answered a question or request for information from the Planning Department, Sheriff's Department, or County Attorney's Office, in relation to the application for the Sexually Oriented Business Special Use Permit;
- (D) An applicant or an applicant's spouse has been found to be in violation any provision of this Regulation, other than the offense of operating a sexually oriented business without a special use permit, within two years immediately preceding the application. The fact a violation of these Regulations is being appealed is irrelevant for purposes of Section 45.7.1;
- (E) The premises to be used for the sexually oriented business are not in compliance with applicable zoning laws or have not been approved by the

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health department, the fire department, or the building official as being in compliance with applicable laws and regulations;

- (F) The special use permit fee required by this Regulation has not been paid;
- (G) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (H) An applicant or the proposed establishment is in violation of or is not in compliance with these Regulations;
- (I) The sexually oriented business will be located within 1,000 feet of a church or place of religious worship, public or private elementary or secondary school, child care facility, boundary of an area zoned as a restricted use area, public library, public park, or within 500 feet of another sexually oriented business which does not have a common entrance with another sexually oriented business;
- (J) The applicant or the applicant's spouse has been required, at anytime, to register as a sex offender;
- (K) An applicant or an applicant's spouse has been convicted, in any jurisdiction, of a crime involving any of the following offenses, including attempt, conspiracy, solicitation, or aiding and abetting:

Admitting minor to obscene motion picture;

Contributing to the delinquency of a child or minor;

Debauching a minor;

Distributing obscene literature;

Harboring a runaway child;

Incest

Keeping a place of prostitution;

Kidnapping;

Obscenity;

Pandering;

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Possession of visual depiction of child, including child pornography and any related offenses, including but not limited to allowing a child to participate in child pornography, possession, distribution, or sale of child pornography;

Prostitution and any related crimes, including but not limited to solicitation of prostitution;

Public indecency;

Public lewdness;

Sale of obscene literature to a minor;

Sexual abuse;

Sexual assault; and

For which:

Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

The fact that a conviction is being appealed shall have no effect on the denial of the Sexually Oriented Business Special Use Permit.

45.7.2 The special use permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The special use permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

45.7.3 An applicant who has been convicted or whose spouse has been convicted of an offense listed in Section 45.7.1(K) may qualify for a Sexually Oriented Business Special Use Permit only when the time period required by that section has elapsed.

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45.7.4 The Sarpy County Planning and Building Director, upon receipt of the application outlined in Section 45.6 shall forward said application to the appropriate officials in the County's health, fire, and building inspection departments for their review and inspections. Said departments shall be responsible for initiating the inspections as outlined in Section 45.6.4.

45.7.5 For purposes of Section 45.7.1(l), above, measurement shall be made in a straight line, without regard to intervening political subdivision boundaries, buildings, and/or structures from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or place of religious worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, or restricted use area.

45.8 APPLICATION FEE

The annual nonrefundable fee for a Sexually Oriented Business Special Use Permit of \$_____ shall be submitted with the application for the special use permit. In the event a special use permit is not issued after an application is submitted, or if a special use permit is revoked after it is issued, no part of the fee shall be refunded.

45.9 RESERVATION OF AUTHORITY TO INSPECT SEXUALLY ORIENTED BUSINESS

In order to verify that the holder of a Special Use Permit for Sexually Oriented Businesses and any and all lessees, renters, and/or licensees of the sexually oriented business are operating in accordance with all applicable safety, fire, building, and zoning codes; laws and regulations; and other applicable requirements, a representative of the Planning Department, Planning Commission, and/or the County Board may inspect the premises of said permit holder's, renter's, lessee's or licensee's sexually oriented business at any time the business is occupied by at least one person. A Sexually Oriented Business Special Use Permittee commits an offense if he, his agent (s), or his employee(s) refuse to permit a lawful inspection of the premises by a representative of the above described departments. The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

45.10 EXPIRATION OF SPECIAL USE PERMIT FOR A SEXUALLY ORIENTED BUSINESS

45.10.1 Each Sexually Oriented Business Special Use Permit shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 45.6. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the special use permit will not be affected.

45.10.2 When the County Board denies renewal of a special use permit, the applicant shall not be eligible for a special use permit for one year from the date of denial. If, subsequent to denial, the County Board finds that the basis for denial of the renewal special use permit has been corrected or abated, the applicant will be eligible for a special use permit if at least 30 days have elapsed since the date denial became final.

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45.11 SUSPENSION OF SPECIAL USE PERMIT FOR A SEXUALLY ORIENTED BUSINESS

45.11.1 The County Board shall suspend a special use permit for a period not to exceed 30 days if it determines that:

- (A) The owner of the sexually oriented business is not in compliance with Section 45.6.10, above;
- (B) The Sexually Oriented Business Special Use Permittee, his agent, employee, or other related individual has refused to allow an inspection of the sexually oriented business premises as authorized by this Regulation;
- (C) The Sexually Oriented Business Special Use Permittee, his agent, employee, or other related individual knowingly permitted gambling, other than keno, by any person on the sexually oriented business premises;
- (D) The Sexually Oriented Business Special Use Permittee, his agent, employee, or other related individual demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers;
- (E) The Sexually Oriented Business Special Use Permittee, his agent, employee, or other related individual has not followed the additional restrictions found in Section 45.18-45.22, below, where applicable; or
- (F) The Sexually Oriented Business Special Use Permittee or his spouse has been convicted of a crime involving the offenses listed in 45.7.1(K), including attempt, conspiracy, solicitation, or aiding and abetting of those crimes, and the time period required by that section has not elapsed. The fact that a conviction is being appealed shall have no effect on the suspension of the Sexually Oriented Business Special Use Permit.

45.12 REVOCATION OF SPECIAL USE PERMIT FOR A SEXUALLY ORIENTED BUSINESS

45.12.1 The County Board shall revoke a Sexually Oriented Business Special Use Permit if a cause of suspension in Section 45.11 occurs two or more times, including simultaneous causes of suspension, within a twelve month period of time.

45.12.2 The County Board shall also revoke a Sexually Oriented Business Special Use Permit if the County Board Determines:

- (A) An applicant has failed to provide information reasonably necessary for issuance of the Sexually Oriented Business Special Use Permit, has provided false information on the application for the Sexually Oriented Business Special Use Permit, or has falsely answered a question or request for information from the Planning Department, Sheriff's Department, or County Attorney's Office, in relation to the application for the Sexually Oriented Business Special Use Permit;

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- (B) The Sexually Oriented Business Special Use Permittee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (C) The Sexually Oriented Business Special Use Permittee or an employee has knowingly allowed one of the crimes listed in Section 45.7.1(K) to occur on the premises;
- (D) The Sexually Oriented Business Special Use Permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's Sexually Oriented Business Special Use Permit was suspended;
- (E) The Sexually Oriented Business Special Use Permittee has been convicted of an offense listed in Section 45.7.1(K) for which the time period required in that Section has not elapsed;
- (F) On one or more occasions within a twelve month period, a person or persons committed an offense occurring in or on the premises of a sexually oriented business of a crime listed in Section 45.7.1(K), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offense was committed;
- (G) The Sexually Oriented Business Special Use Permittee or an employee has knowingly allowed any specified sexual activity to occur on the sexually oriented business premises; or
- (H) The Sexually Oriented Business Special Use Permittee is delinquent in payment to the County for taxes related to the sexually oriented business;

45.12.3 The fact that a conviction is being appealed shall have no effect on the revocation of the special use permit, pursuant to Sections 45.12.2(C), (E), or (F), above.

45.12.4 Section 45.12.1(G) does not apply to adult motels as a ground for revoking the special use permit unless the Sexually Oriented Business Special Use Permittee or employee knowingly allowed specified sexual activity to occur in a public place or within public view.

45.11.5 When the County Board revokes a special use permit, the revocation shall continue for one year and the Sexually Oriented Business Special Use Permittee will not be eligible for a Sexually Oriented Business Special Use Permit for one year from the date the revocation became effective. If, subsequent to revocation, the County Board finds that the basis for the revocation has been corrected or abated, the applicant will be eligible for a special use permit if at least 90 days have elapsed since the date the revocation became effective. If the special use permit was revoked under Section 45.12.2(E), an applicant may not be granted another special use permit until the appropriate number of years required under Section 45.7.1(K) has elapsed.

45.13 TRANSFER OF SPECIAL USE PERMIT

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The Sexually Oriented Business Special Use Permittee including any applicant for a Sexually Oriented Business Special Use Permit shall not transfer his Sexually Oriented Business Special Use Permit or any part of his ownership or control of a sexually oriented business to another person, nor shall the Sexually Oriented Business Special Use Permittee operate a sexually oriented business under the authority of a Sexually Oriented Business Special Use Permit at any place other than the address designated in the application.

45.14 GRANDFATHER CLAUSE

Any sexually oriented business operating at the time this Regulation is enacted, shall be deemed a non-conforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such non-conforming uses shall be required to apply for a Sexually Oriented Business Special Use Permit within three months prior to the one year anniversary of the enactment of this Regulation.

45.15 SUBSEQUENT DEVELOPMENTS

A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the Sexually Oriented Business Special Use Permit, of a church or place of religious worship, public or private elementary school, child care facility, boundary of an area zoned as a restricted use area, public library, or public park. For purposes of this section, "renewal of a Sexually Oriented Business Special Use Permit" means the renewal of a valid and existing special use permit, and does not include an application for a special use permit that is submitted after a special use permit has expired or been revoked.

45.16 EXEMPTIONS

The following are exempt from regulation under this Regulation:

- (A) A bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store the primary purpose of which is the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer;
- (B) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed massage therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber, engaged in performing the functions authorized under the license held; or
- (C) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

45.17 RELIEF

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- 45.17.1 If the County Board denies the issuance of a special use permit, suspends, or revokes a special use permit, the Building and Planning Director or his designee shall send to the applicant, or the Sexually Oriented Business Special Use Permittee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the Sexually Oriented Business Special Use applicant or permittee whose application for a special use permit has been denied or whose special use permit has been suspended or revoked shall have the right to appeal to the district court of this County. Appeals from the final decision of the County Board must be made in writing to a district court of this county within 30 days from the date of the final decision of the County Board. After 30 days, all decisions of the County Board become final.
- 45.17.2 If the County Board denies the issuance of a special use permit to an applicant because the location of the sexually oriented business establishment is in violation of Section 45.7.1(I) of this Regulation, then the applicant may, not later than fourteen (14) calendar days after the denial is issued, file with the County Board a written request for a waiver of the locational restrictions of Section 45.7.1(I).
- (A) If the written request is filed with the County Board within the fourteen-day limit, the County Board shall consider the request and set a date for the hearing within 30 days from the date the written request is filed.
 - (B) A hearing by the County Board may proceed in accordance with the County Board Meeting Rules and Nebraska Open Meetings Act.
- 45.17.3 The County Board may, in its discretion, grant a waiver from the locational restrictions of Section 45.7.1(I) if it makes the following findings:
- (A) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the health, safety, and general welfare of the public;
 - (B) That the granting of the waiver will not violate the spirit and intent of this Regulation;
 - (C) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas nor encourage the development of urban and rural blight;
 - (D) That the location of the sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
 - (E) That all other applicable provisions of this Regulation will be observed.
- 45.17.4 The County Board shall grant or deny the waiver by a majority vote. Failure to reach a majority vote shall result in denial of the waiver. Decisions of the County Board are appealable to a district court of this County. Appeals from the final decision of the

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County Board must be made in writing to a district court of this county within 30 days from the date of the final decision of the County Board. After 30 days, all decisions of the County Board become final.

- 45.17.5 If the County Board grants the waiver, it is valid for one year from the date of the Board's action. Upon the expiration of a waiver, the sexually oriented business is in violation of the locational restrictions of Section 45.7.1(l) until the applicant applies for and receives another waiver.
- 45.17.6 If the County Board denies the waiver, the applicant may not reapply for a waiver until at least twelve months have elapsed since the date of the County Board's denial.
- 45.17.7 The grant of a waiver does not exempt the applicant from any other provisions of this Regulation other than the locational restrictions found in Section 45.7.1(l)

45.18 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

An escort agency shall not employ any person under the age of 18 years.

45.19 ADDITIONAL REGULATIONS FOR ADULT MOTELS

- (A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Regulation.
- (B) A person or persons in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a Sexually Oriented Business Special Use Permit, shall not rent or sublet a sleeping room to a person and, within less than ten hours from the time the room is rented or subletted, rent or sublet the same sleeping room again.

45.20 ADDITIONAL REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS

45.20.1 A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of not less than one 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (A) Upon application for a sexually oriented special use permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also

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designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The County Board may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (B) The application shall be sworn to be true and correct by the applicant.
- (C) No alteration in the configuration or location of a manager's station may be made without the prior approval of the County Board.
- (D) It is the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (E) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this Section must be by direct line of sight from the manager's station. No viewing area shall have a door, half-door, curtain, portal partition or other divider unless at least one side is completely open to an adjacent public room and a manager's station so that the area inside is visible to persons in the adjacent public room and a manager's station.
- (F) It shall be the duty of the owner(s) and operator(s), and it shall also be the duty of any agent or employee present in the premises to ensure that the view area specified in this Section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access

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to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this Section.

- (G) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level.
- (H) It shall be the duty of the owner(s) and operator(s) and it shall also be the duty of any agent and/or employee present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

45.20.2 All locational requirements of this Section must be approved by the Building and Planning Director within 30 days after the application for the Sexually Oriented Business Special Use Permit is filed.

45.21 ADDITIONAL REGULATION REGARDING DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS

45.21.1 No person shall, in a business establishment open to persons under the age of 17 years, display a book, pamphlet, newspaper, magazine, film, or videocassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following: human sexual intercourse, masturbation, or sodomy; fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast(s); less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast(s) below the top of the areola; or human male genitals in a discernibly turgid state, whether covered or uncovered.

45.21.2 In this Section "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment: it is available to the general public for handling and inspection; or the cover, outside packaging, or contents of the item is visible to members of the general public.

45.22 ADDITIONAL REGULATIONS PERTAINING TO ALL SEXUALLY ORIENTED BUSINESSES

45.22.1 No person shall appear in a sexually oriented business, in a state of nudity, pursuant to Sarpy County Ordinance_____.

45.22.2 No person shall appear in a sexually oriented business while in a state of semi-nudity unless the person is an employee who, while semi-nude shall be at least six feet from any patron or customer and on a stage at least five feet from any door.

45.22.3 No employee shall, while semi-nude in a sexually oriented business, solicit any pay or gratuity from any patron or customer, and no patron or customer shall pay or give any gratuity to any employee while said employee is semi-nude in a sexually oriented business.

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45.22.4 No employee shall, while semi-nude in a sexually oriented business, touch a patron or customer or the clothing of a patron or customer.

45.22.5 No sexually oriented business shall serve or sell alcohol, or permit the consumption of alcohol on the premises of the sexually oriented business.

45.22.6 No person under the age of eighteen years old shall be allowed on the premises of a sexually oriented business.

45.22.7 No sexually oriented business shall operate between the hours of 1:00 a.m. and 10:00 a.m.

45.22.8 No part of the interior of the sexually oriented business shall be visible from the exterior of the business.

45.22.9 No sign for a sexually oriented business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings, or pictorial representations that emphasize specified anatomical areas or specified sexual activities.

45.23 INDEMNIFICATION

Any application for a Sexually Oriented Business Special Use Permit that is proposed for County property, pursuant to this Regulation, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Boards, employees, committee members, attorneys, and agents from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, intentional or negligent acts of persons on the premises of the sexually oriented business, the placement, construction, modification, location, operation, maintenance, repair, removal, or restoration of the sexually oriented business, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, expert witness fees, and any other fees recoverable by law are included in those costs that are recoverable by the County.

45.24 ENFORCEMENT

Any person, firm, corporation, agent or employee thereof who violates any of these Regulations shall be guilty of a Class III misdemeanor, punishable by a maximum of three months imprisonment, a five hundred dollar fine, or both.

45.25 EFFECTIVE DATE

This Regulation shall be effective immediately upon passage, pursuant to applicable and legal procedural requirements.